

**STATE OF MAINE  
BEHAVIORAL AND DEVELOPMENTAL SERVICES  
MENTAL RETARDATION SERVICES**

**14- 197 CMR Ch 6**

**Regulations Governing Adult Protective Assessments & Investigations for Persons with  
Mental Retardation or Autism**

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This policy governs investigations by the Department of Behavioral and Developmental Services arising from allegations of abuse, neglect or exploitation of incapacitated or dependent adults with mental retardation or autism.

**Statutory Authority:** 22 M.R.S.A. §3470 *et seq.*

**Regulatory Authority:** 14 - Department of Behavioral and Developmental Services  
197 - Mental Retardation Services

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**1. Purpose and Scope:** The Department of Behavioral and Developmental Services (BDS) is responsible for investigating allegations of abuse, neglect or exploitation or the substantial risk of abuse, neglect or exploitation of adults with mental retardation and/or autism who are incapacitated or dependent. Adult Protective Services (APS) is the unit within the Department that carries out this function.

It is the policy of the Department that protective services are intended to allow the incapacitated or dependent adult the same rights as other citizens and to keep the adult safe. The objectives are to mobilize the adult's own strengths; to utilize community resources to improve the adult's ability to function and to live life in safety, dignity, and with as much satisfaction, enjoyment and comfort as possible; to prevent unnecessary or inappropriate institutionalization; to safeguard the rights and resources and maintain the physical and mental health of the adult; to prevent injury to the adult; and to recognize and preserve the rights of self-determination and self-care of the adult.

**2. Definitions:** For purposes of this rule, the following terms have the following meanings:

A. **Abuse** means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; sexual abuse or exploitation; or the willful deprivation of essential needs. NOTE: Treatment of an incapacitated or dependent adult by an accredited practitioner of a recognized religious organization is not considered to be abuse, neglect or exploitation solely because such treatment is by spiritual

means.

B. **Advocate** means an employee of the Office of Advocacy who provides advocacy services to a person with mental retardation or autism.

C. **Adult** means any individual who has attained the age of 18 or who is a legally emancipated minor.

D. **Agency** or **provider agency** means an organization or individual providing services to adults with mental retardation or autism, funded in whole or in part, licensed/certified or otherwise authorized by the Department.

E. **At risk** means a situation in which physical or mental injury, physical or mental impairment, physical pain, or mental anguish can occur.

F. **Autism** refers to a developmental disorder characterized by a lack of responsiveness to other people, gross impairment in communicative skills and unusual responses to various aspects of the environment, all usually developing within the first 30 months of age.

G. **Commissioner** means the Commissioner of the Department of Behavioral and Developmental Services.

H. **Community Consent Decree** means the agreement between the parties pursuant to *CAB v. Glover*, Civil Docket No. 91-321P.

I. **Conservatorship** means a fiduciary relationship created by court appointment of a conservator to manage the financial affairs of a protected individual based upon a finding of inability of the protected individual to manage property and affairs effectively, ordered by a court pursuant to the Maine Probate Code, 18-A M.R.S.A. §5-401 *et seq.* or 18-A M.R.S.A. §5-601 *et seq.*

J. **Crisis Response System** means, for purposes of this rule, the Department's system of response to reports that an adult with mental retardation or autism is in need of assistance, services, medical treatment, or other aid in order to keep that adult safe.

K. **Danger** means a situation or condition of abuse, neglect or exploitation, or the substantial risk thereof, and may involve the inability of a person with mental retardation or autism with no responsible substitute decision-maker to give informed consent to medical treatment.

L. **Department** means the Department of Behavioral and Developmental Services.

M. **Dependent Adult** means any adult who is wholly or partially dependent upon one or more other individuals for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.

N. **Director, Office of Legal Affairs** means the Central Office employee who, among other things, is responsible for directing the work of the APS unit within the Department.

O. **Emergency** means a situation in which:

- (1) the adult with mental retardation or autism is in immediate risk of serious harm;
- (2) the adult with mental retardation or autism is unable to consent to services which will diminish or eliminate the risk; and
- (3) there is no guardian to consent to emergency services.

P. **Exploitation** means the illegal or improper use of an adult with mental retardation or autism or his resources for another's profit or advantage.

Q. **Finding** means a determination made at the completion of an investigation regarding capacity, dependency, danger and substantial risk of danger, which is based on facts gathered during the investigation.

R. **Guardianship** means a legal relationship in which a guardian is given authority to make decisions regarding an individual made a ward. The guardian of an incapacitated person with mental retardation or autism may be appointed by will or by a court pursuant to the Maine Probate Code, 18-A M.R.S.A. §5-301 *et seq.* or 18-A M.S.R.A. §5-601 *et seq.* A guardianship ordered by a court may be limited or general; it may be temporary or permanent.

S. **Incapacitated Adult** means any adult with mental retardation or autism who is impaired by the condition to the extent that the adult lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the adult's personal welfare, or to the extent the adult cannot effectively manage or apply his/her estate to necessary ends.

T. **Individual Support Coordinator (ISC)** means a Regional employee of the Department's Mental Retardation Services Program who provides case management services to a person with mental retardation or autism.

U. **Investigation** is the process of gathering and evaluating facts, as well as reaching and documenting conclusions about allegations of abuse or neglect.

V. **Investigator** means the Adult Protective Services unit employee who is responsible for conducting an investigation including directing an approved employee of a provider agency to conduct specific investigative tasks.

W. **Mental retardation** means a condition of significantly sub-average intellectual functioning manifested during a the developmental period, existing concurrently with demonstrated deficits in adaptive behavior. The developmental period extends from birth to 18 years of age. Mental retardation must have its onset prior to age 18, and impaired adaptive behavior may be reflected in maturational rate, learning ability or social adjustment.

X. **Mental Retardation Services Program** means the administrative division of the Department that develops, oversees, funds and coordinates the delivery of services and supports to adults with mental retardation and/or autism who receive services and supports from the Department.

Y. **Neglect** means a threat to a person's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.

Z. **Person** means an incapacitated or dependent adult with mental retardation or autism who is the subject of an adult protective referral.

AA. **Protective services** mean services that will separate an incapacitated or dependent adult with mental retardation or autism from danger. Protective services include but are not limited to social, medical and psychiatric services necessary to preserve the person's rights and resources and to maintain the person's physical and mental well-being.

BB. **Provider** means an organization or individual providing services to adults with mental retardation or autism, funded in whole or in part, licensed/certified or otherwise authorized by the Department.

CC. **Public guardian** means either the Department of Behavioral and Developmental Services or the Department of Human Services, when either is appointed as such by a court pursuant to the Probate Code.

DD. **Reporter** means an individual or agency that makes a referral or complaint to Adult Protective Services about a situation of alleged abuse, neglect, or exploitation of an incapacitated or dependent person with mental retardation or autism.

EE. **Serious harm** means:

(1) serious physical injury or impairment;

(2) serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or serious dysfunctional behavior; or

(3) sexual abuse or exploitation.

FF. **Sexual abuse or exploitation** means contact or interaction of a sexual nature, including exposure to pornographic materials, involving an incapacitated or dependent adult with mental retardation or autism who does not have the capacity to consent, or, if capable of consent, did not consent. Sexual activity between a dependent person and a paid provider of service, whether consensual or not, constitutes sexual abuse.

GG. **Substantiated/unsubstantiated Findings** mean a determination, after investigation, that an allegation of abuse, neglect or exploitation is or is not credible based upon a preponderance of the evidence.

HH. **Ward** means an individual for whom a guardian has been appointed.

**3. Confidentiality and disclosure:** Activities, reports and information relating to the Department's adult protective activities and containing personally identifying information are confidential and may not be disclosed except as follows:

A. Confidential adult protective information shall be available to and used by authorized personnel of the Department and legal counsel of the Department only in carrying out their functions.

B. The identity of a reporter is confidential and shall not be disclosed except to authorized Department personnel and legal counsel in carrying out their functions unless:

- (1) the permission of the reporter is first obtained; or
- (2) the *guardian ad litem* of an incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited seeks such disclosure; or
- (3) a grand jury determines that such disclosure is necessary in the conduct of its official business; or
- (4) a court finds that such disclosure is necessary to the determination of an issue before it.

C. All other department records that contain personally identifying information and are created or obtained in connection with the Department's adult protective activities and activities related to a person while under the jurisdiction of the Department are confidential and subject to release only under the conditions of subsections 1 through 3 below:

(1) The Department may in its discretion disclose relevant information in the records to the following:

- (a) an agency investigating a report of abuse, neglect or exploitation of an adult when the investigation is authorized by statute or agreement with the Department; or
- (b) an advocacy agency conducting an investigation authorized by 34B M.R.S.A §3474(2)(B); or
- (c) a physician treating an incapacitated or dependent adult whom he reasonably suspects may be abused, neglected, or exploited; or

- (d) an incapacitated or dependent adult (and/or the guardian of an incapacitated or dependent adult) named in a record who is reported to be abused, neglected, or exploited or the caretaker of the incapacitated or dependent adult; or
- (e) an individual having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult; or
- (f) any organization or individual engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the Commissioner or his designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the Department prior to the contact; or
- (g) organizations or individuals conducting personnel or licensure action pursuant to 22 M.R.S.A Ch. 857; or
- (h) organizations or individuals entitled to information pursuant to 5 M.R.S.A §9057 but limited to the purposes described therein; or
- (i) a relative by blood, marriage or adoption or an incapacitated or dependent adult named in a record.

(2) The Department shall disclose relevant information in the records to the following entities upon request:

- (a) The *guardian ad litem* of an incapacitated or dependent adult named in a record who is reported to be abused, neglected, or exploited; or
- (b) A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it; or
- (c) A grand jury on its determination that access to those records is necessary to conduct its official business.

(3) The Department shall disclose information as required by law to:

(a) The Office of Advocacy pursuant to 34-B M.R.S.A §1205.

(b) The Consumer Advisory Board pursuant to 34-B M.R.S.A §1216 and the Community Consent Decree; and

(c) A Protection and Advocacy Agency for Persons with Disabilities, which in Maine is the Disability Rights Center, when conducting an investigation under Ch 961, Pub. L. 88-164, Title I, Part C or Pub. L. 99-319, regarding a developmentally disabled or mentally ill individual who is or who, within the last 90 days, was residing in a facility rendering care or treatment, when a complaint has been received by a Protection and Advocacy Agency for Persons with Disabilities or there is probable cause to believe that the individual has been subject to abuse or neglect, and the individual does not have a legal guardian or the individual is under public guardianship. The determination of which information and records are relevant to the investigation is made by agreement between the Department and the agency.

D. Upon receipt of a written request by someone named in a record, the Department has discretion to release information in the record that pertains to the individual who made the written request on their own behalf. Released information cannot reveal confidential information about other individuals. If the individual signing the release purports to be acting on behalf of another, e.g., as guardian or by power of attorney, the requesting party must also provide a copy of the relevant documents.

E. Records created by other entities that are included in Department records can only be disclosed in accordance with the terms of a release or applicable statute.

F. Disclosure Regarding Public Wards or Protected Individuals. When the Department is appointed as an individual's public guardian or conservator, it has the authority and discretion to consent to disclosure of relevant information in its records. It may do so within the scope of its legal appointment, as may otherwise be required by law and in the same manner as the individual, had that individual been able to exercise that authority. In fulfilling its responsibilities, the Department will make reasonable efforts to maintain the individual's privacy to the maximum extent possible.

G. Protected Information.

Protected information is relevant information that may not be disclosed to a requesting party under State or Federal law without appropriate consent or court order.

**4. Intake of referrals, reports and complaints:** Referrals, reports or complaints may be conveyed by telephone, letter, or personally, and may be anonymous. The Department's Regional Offices will serve as a point of intake for referrals, reports and complaints. After hours, the crisis number will be answered by individuals trained to refer cases as appropriate to the Adult Protective Services unit investigators. Whether intake is by a crisis worker, an ISC, a

human services aide, or the investigator, as much of the following specific information as possible shall be elicited from the reporter:

- A. name, address and age of the referred adult;
- B. name and address of caretaker, if any;
- C. nature and extent of the referred adult's incapacity or dependency;
- D. nature and gravity of condition or injury resulting from reported abuse, neglect or exploitation;
- E. names and addresses of referred adult's relatives and close friends when pertinent or when it appears that they serve as supportive individuals;
- F. name, address and telephone number of the reporter, unless the reporter wishes to remain anonymous; and
- G. any other pertinent information, such as names, addresses or phone numbers of collateral contacts.

**5. Initial Assessment and Action by the Department:** When a report of abuse, neglect or exploitation is received by BDS during regular business hours, a determination will be made with regard to the urgency of the situation. If there is an immediate risk of serious harm, the APS unit must be contacted immediately. The APS investigator will assess the level of risk based on the allegations in the referral, as well as on the subject person's capacity and dependency. If there is danger to a person, the APS investigator will in consultation with reporters, agency staff or others, proceed immediately to take action, within the limits defined by law, or have action taken, to ensure the safety of the person and preserve evidence. The agency must cooperate with the APS investigator to the fullest extent. Such actions may include, but are not limited to:

- A. law enforcement's removal of an alleged perpetrator;
- B. initiation by the APS unit, with the approval of the guardianship manager or designee, of emergency guardianship proceedings or the termination of a guardian's involvement;
- C. a guardian's removal of a ward from a home and/or arrangement for respite or crisis services; or
- D. an Individual Support Coordinator (ISC) arranging for professional services.

Allegations of abuse, neglect or exploitation which become known after regular business hours should be reported to the Mental Retardation Crisis Unit. The crisis unit will consult with



the APS Manager or designee as necessary, respond to assure the safety of the person in question, preserve evidence and take any other action that appears warranted in their professional judgment to protect the person. Crisis Unit supervisors will receive training regarding investigation techniques, including the preservation of evidence and when to involve law enforcement. Allegations reported to the Crisis Unit will be brought to the attention of the Adult Protection Unit on the next business day.

**6. Priority of cases:** Cases shall be categorized by the Adult Protection Unit as having a High, Moderate, or Low priority based on the seriousness of the allegation. The seriousness of the allegation will take into account the subject person's capacity, dependency, danger and substantial risk of harm, and the ability/inability of the person to give informed consent to medical treatment if treatment appears necessary.

A. **High.** High priority cases are those in which the allegation, if substantiated, would indicate that the person is in imminent risk of serious harm or immediate need of medical attention. If the person is receiving agency services, steps must be taken immediately by the agency to assure the person's safety. The APS staff will formulate a plan of action immediately with regard to the most expedient way to protect the person and assess the validity of the allegations. If the situation becomes known after regular business hours, a crisis worker will respond to assure the safety of the person pursuant to paragraph 5 above. Investigation of high priority referrals shall commence on the day of receipt of the referral, report or complaint.

B. **Moderate.** Moderate priority cases are those that do not present an imminent risk of serious harm or immediate need for medical attention, but nevertheless, if not addressed, are likely to get worse without intervention and could, if continued, expose the client to serious physical injury or harm. Investigation of these cases shall be initiated within three working days of receipt of a referral, report or complaint.

C. **Low.** Low priority cases are all other APS reports of alleged abuse, exploitation or neglect. Investigation shall commence within five working days of the date of the receipt of the referral, report or complaint.

**7. Coordination with law enforcement and other agencies during investigation:** In conducting an investigation the investigator may coordinate with law enforcement, the Department of Human Services, medical and health personnel when indicated, or other individuals or agencies, as appropriate. Such coordination may extend to joint interviewing (when indicated) and whenever there are issues relating to security of evidence, chain of custody, or physical examination of persons or places. Law enforcement must be notified immediately when it is determined that an incapacitated or dependent adult with mental retardation or autism is lost or missing, in accordance with the Department's Lost or Missing policy.

Law enforcement must be notified immediately when necessary to separate the incapacitated or dependent adult from danger.

The District Attorney's office or law enforcement must also be notified upon finding evidence indicating that an individual has abused or neglected an incapacitated or dependent

adult, resulting in serious harm, or has exploited an incapacitated or dependent adult. *See* 22 MRSA §3485. Such a report can be made with the approval of the APS Manager, the Director, Office of Legal Affairs, or an Assistant Attorney General. In addition, the Office of Chief Medical Examiner must be notified immediately of any referrals involving a suspicious death.

The APS unit shall notify the Director, Office of Legal Affairs, of situations that may justify reports to professional and occupational licensing boards regarding an individual alleged to have engaged in any unlawful activity or professional misconduct or in conduct in violation of laws or rules relating to a licensing board. Mandated reporters who fail to report are included in this category. No release of information shall be made to licensing boards without the specific prior approval of the Director, Office of Legal Affairs.

**8. Investigation:** Investigations shall include determinations about a person's capacity, dependency, danger or substantial risk of danger, and need for services. Investigation reports should conclude with a written statement of findings, evaluations, conclusions and recommendations. Investigation will be conducted by the Adult Protective Services investigator. The APS investigator may delegate specific investigative tasks to approved staff of a provider agency after determining that the designated staff is capable of performing the tasks, has sufficient skill and experience to handle the tasks in the instant case, and can perform the tasks objectively without any conflicts of interest. The decision whether to perform the investigation or to request the assistance of a provider to investigate certain aspects of an allegation will be made on a case-by-case basis by the APS investigator with the agreement of the provider. Once this determination is made the provider must assure compliance with APS policy and provide written documentation of its activities. In all cases the findings and recommendations coming out of the investigation remain the responsibility of the state APS investigator.

**9. Findings and recommendations:** Findings by the investigator shall be documented, and recommendations shall be supported by such findings. When any component of an investigation is delegated to a provider, its written documentation shall be conveyed promptly to the APS investigator. The APS investigator may perform or direct the provider to perform additional investigation tasks. Based on all the information obtained by or provided to the APS investigator, the APS investigator shall prepare a written report with findings and recommendations.

**10. Standard for substantiation:** Allegations of abuse, neglect or exploitation shall be found to be substantiated if they are supported by a preponderance of the evidence.

**11. Final dispositions and required documentation for case closing:** The investigator shall include a written statement of disposition before closing each case. Investigations will be complete when:

- A. danger or substantial risk of danger to the person is not substantiated; or
- B. danger or substantial risk of danger to the person has been reduced or eliminated; or
- C. the person alleged to have been abused cannot be located or is deceased and all reasonably available investigatory information has been obtained; or

D. the person, having the capacity to consent, and after having been informed of their ability to receive services, refuses services.

Final disposition and documentation shall consist of a written report prepared by the investigator, any written action or disposition statements made by the provider, and any referrals or notifications made to other people or agencies. The written report shall reasonably describe the manner in which the investigation was conducted and set forth the findings, conclusions and recommendations. The Director, Office of Legal Affairs, or a state employee designated by the Director, shall review the entire record to determine if the investigation was adequate, if the written report fairly reflects the investigation, and if the findings, conclusions and recommendations are supported by a preponderance of the evidence described. The Director or designee may issue the investigator's recommendations as written or may modify them as appropriate and issue different recommendations. In any event, the final report shall be issued no later than thirty days after the date of the receipt of the referral, report or complaint.

**12. Agency Response to Recommendations:** Agencies will be expected to address all recommendations contained in an APS report in writing within thirty days of receipt of the report. The Adult Protective Services case will remain open until all recommendations have been accepted and implementation has been initiated by the agency or until modifications of the recommendations acceptable to agency and to the APS investigator are initiated by the agency.

**13. Grievances and appeals:** Recipients of services aggrieved by a determination of the Department that is the direct result of an Adult Protective Services investigation have the right to appeal that decision to the extent provided by the Department's Grievance and Appeals policy. *See* 14-197 CMR, Chapter 8, Rule Describing Grievances and Appeal Procedures for Persons with Mental Retardation.